

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JENIFER BENTLEY, as trustee of

the 2001 Bentley Family Trust.,

Plaintiff,

v.

UNITED OF OMAHA LIFE

INSURANCE COMPANY,

Defendant.

} Case No. CV 15-7870 DMG (AJWx)

**ORDER RE DEFENDANTS' MOTION  
TO DENY CLASS CERTIFICATION  
[111]**

This matter is before the Court on Defendant United of Omaha's ("United") Motion to Deny Class Certification. [Doc. # 111.] The Court deems this matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15. For the reasons set forth below, Defendant's Motion is DENIED.

**I.  
PROCEDURAL BACKGROUND**

On December 4, 2015, Plaintiff Jennifer Bentley ("Bentley") filed a First Amended Class Complaint ("FAC") against Defendant alleging claims for (1) breach of contractual

1 duty to pay a covered claim; (2) breach of the implied covenant of good faith and fair  
 2 dealing; and (3) violation of California Business & Professions Code § 17200 *et seq.*  
 3 (“UCL”). [Doc. # 16.] United then filed a motion to dismiss, which the Court granted in  
 4 part and denied in part. (“June 22, 2016 Order”) [Doc. # 27.] The Court also denied  
 5 United’s alternative motion to strike the class allegations. *Id.*

6 On July 22, 2016, United filed a motion requesting that the Court certify its denial  
 7 order for interlocutory appeal and stay the case pending appeal. [Doc. # 30.] The Court  
 8 denied this request. (“September 14, 2016 Order”) [Doc. # 46.]

9 On January 25, 2017, Bentley filed the operative Third Amended Class Action  
 10 Complaint (“TAC”) alleging class claims for (1) breach of contractual duty to pay  
 11 covered claim; (2) breach of the implied covenant of good faith and fair dealing; or, in  
 12 the alternative, an individual claim for (3) breach of contractual duty to pay a covered  
 13 claim. [Doc. # 87.] The Court granted United’s motion to dismiss Bentley’s individual  
 14 breach of contract claim, but denied the rest of the motion. (“August 8, 2017 Order”)  
 15 [Doc. # 107.]

16 United now moves to deny class certification. (“Motion”) [Doc. # 111.] For the  
 17 reasons stated below, the Court DENIES United’s motion to deny class certification.

18 **II.**  
 19 **FACTUAL BACKGROUND**

20 The Court incorporates its discussion about the factual background from its August  
 21 8, 2017 Order.

22 **III.**  
 23 **DISCUSSION**

24 Defendants may bring a “preemptive” motion to deny certification. *Vinole v.*  
 25 *Countrywide Home Loans, Inc.*, 571 F.3d 935, 939 (9th Cir. 2009). A motion to deny  
 26 class certification and a motion to strike class allegations are functionally equivalent. See  
 27 *Microsoft Corp. v. Baker*, 137 S. Ct. 1702, 1711 n.7 (2017); *Bates v. Bankers Life &*  
 28 *Casualty Co.*, 848 F.3d 1236, 1238 (9th Cir. 2017) (*per curiam*); *Scott v. Family Dollar*  
*Stores, Inc.*, 733 F.3d 105, 110 n.2 (4th Cir. 2013).

1       In this case, the Court has already denied United's motion to strike class  
2 allegations twice before. June 22, 2016 Order at 11–12; August 8, 2017 Order at 10.  
3 Because United appears to rehash old arguments, the Court will treat its motion to deny  
4 class certification as a motion for reconsideration under Federal Rule of Civil Procedure  
5 60(b).

6       Rule 60(b) permits a court to relieve a party from any prior order or decision for a  
7 number of reasons including, but not limited to: (1) mistake, inadvertence, surprise, or  
8 excusable neglect; (2) newly discovered evidence that could not have been discovered  
9 with reasonable diligence; and (3) any other reason that justifies relief. Fed. R. Civ. P.  
10 60(b)(1)-(2), (6).

11       Local Rule 7-18 limits reconsideration, however, to three enumerated grounds:  
12 “(a) a material difference in fact or law from that presented to the Court before such  
13 decision that in the exercise of reasonable diligence could not have been known to the  
14 party moving for reconsideration at the time of such decision, or (b) the emergence of  
15 new material facts or a change of law occurring after the time of such decision, or (c) a  
16 manifest showing of a failure to consider material facts presented to the Court before  
17 such decision.” Additionally, “[n]o motion for reconsideration shall in any manner repeat  
18 any oral or written argument made in support of or in opposition to the original motion.”  
19 *Id.*

20       Defendants do raise a slightly different argument from that in previous motions.  
21 Specifically, United argues that Plaintiffs have modified their class allegation, making it  
22 impossible to certify their class under Rule 23. Motion at 6–8. The Court's main  
23 concern continues to be that “[m]otions to strike class allegations are disfavored because  
24 a motion for class certification is a more appropriate vehicle . . . .” *Thorpe v. Abbott*  
25 *Labs., Inc.*, 534 F. Supp. 2d 1120, 1125 (N.D. Cal. 2008); *Cholakyan v. Mercedes-Benz*  
26 *USA, LLC*, 796 F. Supp. 2d 1220, 1245 (C.D. Cal. 2011) (same). The Court is especially  
27 disinclined to strike class allegations or deny class certification at this stage of the  
28 proceedings because discovery has not been completed.

1       Defendant argues that no additional discovery is needed. For instance, United  
2 notes that Plaintiff has completed a Rule 30(b)(6) deposition. (“Reply”) [Doc. # 117] at  
3. United neglects to mention, however, that the Rule 30(b)(6) deposition took place  
4 *after* Plaintiff submitted her opposition to this motion. *Compare* (“Golub Decl.”) [Doc. #  
5 117-1] ¶2 (deposition occurred on December 13, 2017), *with* (“Opp’n”) [Doc. # 113]  
6 (filed December 5, 2017). Moreover, the Magistrate Judge recently ordered United to  
7 produce documents and answer interrogatories. [Doc. # 118.] Indeed, the Magistrate  
8 Judge issued his order on the same day United filed its reply brief in support of this  
9 motion, and the deadline for production was January 3, 2018. *Id.* It would be premature  
10 for the Court to deny class certification before Plaintiff has had an opportunity to  
11 complete discovery.

12                                  **IV.**  
13                                  **CONCLUSION**

14       In light of the foregoing, Defendants’ Motion to Deny Class Certification is  
15 **DENIED**, without prejudice to renewal of such arguments as are appropriate to class  
16 certification when Defendants file their opposition to Plaintiff’s motion for class  
17 certification, which is due on February 2, 2018. Any further arguments seeking  
18 reconsideration of issues that the Court has previously decided will be summarily denied,  
19 absent a showing of the emergence of new material facts or law. The January 5, 2018  
20 hearing is **VACATED**.

21                                  **IT IS SO ORDERED.**

23                                  DATED: January 4, 2018

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27                                  DOLLY M. GEE  
28                                  UNITED STATES DISTRICT JUDGE